

Agenda Item: 6  
Meeting Date: October 12, 2005

## BAY-DELTA PUBLIC ADVISORY COMMITTEE

### YEAR 5 CALFED PROGRAM PROGRESS AND BALANCE

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**Description:** Both State and Federal statutes, as well as the Record of Decision (ROD), require an annual review of the progress of the CALFED Program. The review is to be completed by November 15 and the results submitted in an Annual Report to the Governor, Secretary of Interior, Legislature and Congress. At its November meeting, the Authority will be asked to adopt a report setting forth the results of the annual review of Program progress.

**Recommended Action:** Information and discussion item.

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#### Background Annual Review

The California Bay-Delta Authority Act states:

- On or before November 15 of each year, the California Bay-Delta Authority (Authority) is required to “review progress in implementing the Program”.
- If the Authority, or Governor, or the Secretary of Interior determines in writing that either the “Program schedule or objective has not been substantially adhered to,” a revised schedule must be prepared, in coordination with the Bay-Delta Public Advisory Committee (BDPAC), that will achieve balanced progress in all Program elements.
- On or before December 15 of each year, the Authority is required to submit annual report that describes status of implementation of all Program elements for the prior fiscal year.

The Federal CALFED Bay-Delta Authorization Act states:

- Not later than November 15 of each year, the Secretary of Interior, in cooperation with Governor, is required to review progress in implementing the Program based on:
  - A. Consistency with ROD; and
  - B. Balance in achieving goals and objectives of the Program
- If the Secretary or the Governor determines in writing that either the Program implementation schedule has not been substantially adhered to or that balanced progress in achieving goals and objectives of the Program is not occurring, a revised schedule must be prepared, in coordination with BDPAC, to achieve balanced progress in all Program elements.

- Not later than February 15 of each year, the Secretary, in cooperation with the Governor, must submit annual report that describes status of implementation of all components of the Program, and sets forth any written determination and revised schedule flowing from the November 15 review of progress.

### **Definition of "Balance"**

"Balance" is defined in the State Act (California Water Code, Section 79402(b)) as: "the implementation of projects, programs, or other actions in a manner that meets both of the following requirements:

1. Is consistent with the implementation schedule and milestones described in the CALFED Bay-Delta Program Record of Decision (ROD), dated August 28, 2000, or as it may be amended.
2. Results in concurrent improvement in all Program elements in a manner that ensures that improvements in some Program elements are not made without corresponding improvements in other Program elements."

There is no definition of "balance" provided in the Federal Act.

### **Potential Consequences of a Finding of Imbalance.**

The State Act does not require an affirmative written statement of balance; only of imbalance, based on lack of substantial adherence to Program schedule or objective. A written finding of imbalance would require the preparation and inclusion in the annual report of a revised schedule, and could implicate (and potentially make difficult) next year's approval of Program plans, because the statutory criteria for approval are: (1) consistency with the Program, and (2) the "balanced achievement of the Program's goals and objectives".

The Federal Act similarly does not by its terms require an affirmative statement of balance; although some have suggested to the contrary based on the heading of relevant Federal provision: "Annual Review of Progress and Balance". Balanced progress is so fundamental to the Federal act, that the act authorizes the Secretary and Federal agency heads to carry out the activities specified therein if they are consistent with: (1) the ROD; (2) requirement that major Program activities (water quality, ecosystem, water supply, and levees) progress in A balanced manner; and (3) the act itself (Sec. 103(a)(2)(A). Consequently, a Federal finding of imbalance would also require the preparation of a revised schedule and could call into question Federal authorization and implementation of the entire Program if not addressed sufficiently.

### **Annual Progress Statement**

In past years, the Authority has included in the Annual Report a written "Statement of Program Accomplishments and Progress" (Progress Statement) which is the result of the November 15 review. The status of implementation of all elements of the California Bay-Delta Program, prior year accomplishments, and coming year objectives are summarized in the annual Progress Statement. It is important to note that the information presented in the Progress Statement is representative of the Program's

activities. Last year's Progress Statement is attached (Attachment 1) by way of example. To date, the annual review process has not resulted in a finding of imbalance; rather an attempt has been made to address identified areas of concern in the following year's Program Plans.

**List of Attachments**

Attachment 1 – 2004 Statement of Program Accomplishments and Progress

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## **2004 Statement of Program Accomplishments and Progress**

The CALFED Record of Decision (ROD) and State and Federal legislation require an annual review of the progress of the CALFED Program and an annual report to the California Legislature and Congress on the implementation status of all elements of the CALFED Program for the prior fiscal year. This summary statement highlights Program accomplishments and progress in 2004, Year 4 of implementation of the CALFED ROD, and the last four years.

In its 2003 report, the Authority noted that four Program areas – water quality, agricultural water use efficiency, levee system integrity, and science – were behind schedule due to funding shortfalls. In the year since that report was issued, funding from Proposition 50 has been allocated to provide support for all Program areas, including those four considered furthest behind schedule. As a result, the Authority is able to report significant progress in 2004. With the passage of Federal authorization for the CALFED Program in October 2004 and the potential for increased Federal appropriations, the outlook for continued progress in 2005 and beyond is encouraging.

### **Program-Wide Accomplishments**

#### **Federal Authorization**

In October 2004, President Bush signed legislation authorizing the Federal agencies to implement CALFED-related activities already authorized, and authorizing an additional \$389 million in Federal appropriations for the CALFED Bay-Delta Program over the next six years. The legislation ensures the ongoing participation of Federal agencies in the Authority and implementation of the CALFED ROD, and authorizes critical funding for a wide array of programs to improve water quality, water supply reliability, Delta levee integrity, and ecosystem health.

#### **Delta Improvements Package**

CALFED agencies made significant progress in 2004 toward improving water supply reliability, water quality, Delta levee stability, and ecosystem protection through a suite of coordinated actions known as the Delta Improvements Package. The Authority in August 2004 adopted a plan for implementing these actions in a manner that ensures public input, accountability and compliance with environmental and water quality commitments. The Delta Improvements Package specifies conditions that would allow the State Water Project (SWP) to increase permitted pumping capacity from its Delta pumping plant. The conditions are designed to provide water supply reliability for export water users while meeting Delta water quality standards and continuing the recovery of key native fish species dependent on the Delta.

#### **Finance Plan**

The Authority developed a Finance Plan that proposes budget and funding priorities for the next decade of CALFED implementation. Developed with extensive input from stakeholders, CALFED agencies, and the public, the Plan identifies estimated funding targets for CALFED Programs, existing funding available to meet those targets, and sets forth a set of finance tools to fill the gaps. The plan also proposes specific funding allocations for the State and Federal governments, water users, and local entities.

### Extension of the Environmental Water Account and Program-Level Regulatory Commitments

After a comprehensive review of progress towards ecosystem restoration milestones and the efficacy of the Environmental Water Account, the CALFED agencies in September 2004 agreed to extend for three additional years the innovative Environmental Water Account, as well as regulatory commitments to continue State and Federal Delta water exports without additional reductions to protect key fish species. Based on this review, the State and Federal fish and wildlife agencies found that the CALFED Program is in compliance with the environmental commitments made in the CALFED ROD.

**Multiple Benefits** – Because many of the problems facing the Bay-Delta system are interrelated, CALFED agencies are committed to implementing long-lasting solutions that address multiple areas. For example, many ecosystem restoration projects funded by CALFED agencies provide water quality and/or water supply improvements in addition to environmental benefits. Nearly 80 percent of the \$2 billion invested in CALFED Programs to date has gone to efforts that contribute to multiple program objectives.

Multiple Benefits in CALFED Projects – 2000 through 2004						
Program Element	Project Grouping	Amount* (\$ million)	Additional Benefit			
			Levee	Supply	WQ	Eco
Conveyance	Barriers	\$ 42.7		✓	✓	
	Flood/eco	3.2				✓
	South of Delta	18.1		✓	✓	
	Delta Conveyance	59.3		✓	✓	✓
Drinking Water Quality	Source	83.2			✓	✓
	Treatment	5.7			✓	
Ecosystem Restoration	Channel/Sediment/Floodplain	51.5				✓
	Ecosystem Water Quality	39.6			✓	✓
	Fish Screens and Passage	112.4		✓		✓
	Flows	18.1				✓
	Habitats	278.4		✓		✓
	Nonnative	5.2				✓
Envir. Water Acct.	Acquisitions	156.8		✓		✓
Levees	Special Projects	30.5	✓	✓	✓	✓
	Subventions	44.7	✓	✓	✓	✓
Storage	Groundwater	211.0		✓		
	Surface Water	70.2		✓	✓	✓
Water Transfers	Transfers	1.7		✓		
Water Use Efficiency	Ag	49.8		✓	✓	✓
	Recycling	542.1		✓		
	Urban	69.7		✓		
Watershed	Watershed	102.4		✓	✓	✓
<b>Grand Total</b>		\$ 1,996.3				

\*These figures represent local, state, and federal encumbrance for CALFED projects and exclude costs for science, oversight, and coordination.

### **Program Element Accomplishments**

**Delta Levee System Integrity** – This year, the unanticipated flooding of Jones Tract in the Delta brought new focus and urgency to the issue of Delta levee stability. The Department of Water Resources has launched a multi-year study to evaluate the potential risk of Delta levee failure as a result of sea level rise, continued land subsidence and the potential for earthquakes. In addition, in response to this year's events, DWR is developing a proposed plan for a comprehensive reassessment of the Delta Levee Program that may lead to changes in the strategy for managing and improving Delta levees.

Because Proposition 50 funds available to support levee activities will be fully expended next year, the CALFED Finance Plan identified a two-year budget shortfall for the Levee Program. As a result, new Federal funding for the Program will be critical and State general fund dollars may be needed in the near-term to ensure continued progress. The Federal authorization for CALFED signed by President Bush in October 2004 authorized \$90 million in appropriations for the U.S. Army Corps of Engineers for Delta levee improvements.

During the first four years of CALFED ROD implementation, the Delta Levee Program:

- Preserved 700 miles of Delta levees through the Delta Levees Subvention Program and made minor improvements while enhancing the Delta environment.
- Increased levee stability on 43 miles of Delta levees.
- Reused more than 900,000 cubic yards of dredge material for levee stability and habitat enhancement.
- Researched and conducted pilot studies on subsidence and subsidence reversal and improved emergency response.

**Conveyance** – The Delta Improvements Package was adopted by the Authority in August 2004. This package includes commitments for several important conveyance projects, including increased State Water Project permitted pumping capacity from the Delta to 8,500 cfs, construction of permanent operable barriers in the south Delta, and construction of an intertie between the State Water Project and the Central Valley Project. Under the guidance of the Science Program, significant research has been conducted and new information developed regarding the movement of fish, sediment, and salt in the Delta that will help guide operations of Delta facilities to better protect fish and water quality while providing reliable water supplies. Specifically:

- Several studies on Delta Cross Channel re-operation and Through-Delta Facility projects have been conducted to evaluate the potential of improving Delta water quality and fishery protection.
- Research is being conducted on the collection, handling, transport, and release of fish salvaged at the Delta pumping plants to provide additional information on the impacts of the State and Federal water projects on fish populations.
- Studies began this year to provide information on the hydrodynamics of the central and south Delta regions, the effects on fish transport and water quality, the potential improvements to Delta operations and management strategies.
- Agencies and stakeholders are working with scientists to re-evaluate the approach to screening at the State and Federal facilities in the Delta through the South Delta Fish Facilities Forum.

**Storage** – Work has progressed on surface storage investigations for all five projects under investigation, and additional work needs to be completed before decisions can be made on which projects should be constructed. In March 2004, the voters in Contra Costa County made a key decision by approving a ballot measure to move forward on Los Vaqueros reservoir expansion.

The Department of Water Resources has prioritized its work to focus remaining State resources on identifying the most viable projects. As part of the Federal planning process, four of the five investigations (North-of-Delta offstream storage, Shasta enlargement, Los Vaqueros expansion, and Upper San Joaquin storage) have either completed or begun their Initial Alternative Reports. The fifth project (In-Delta Storage) has completed a draft State Feasibility Study. Environmental documentation processes have begun on three of the projects (North-of-Delta offstream storage, Upper San Joaquin storage, and In-Delta storage). Using this information, the Storage Program will develop partnerships with potential participants to advance alternatives development and plan formulation. The Storage Program also developed a Common Assumptions effort to standardize methods and models necessary for hydrologic, water quality, and economic analysis.

Through Propositions 13 and 50, the Department of Water Resources has funded more than 100 groundwater investigations and conjunctive use feasibility and pilot studies to be undertaken. Over \$200 million in Proposition 13 funding was awarded between 2001 and 2004 for the construction of 35 groundwater storage and recharge projects that are expected to yield approximately 300,000 acre-feet per year. Coupled with local cost shares for projects, total investment in the groundwater storage program amounts to nearly \$1 billion to date. Improvements in groundwater management and construction of conjunctive use projects will benefit water supply reliability, the Environmental Water Account, ecosystem restoration, water transfers, and other CALFED Programs.

**Watersheds** – During the first four years of CALFED ROD implementation, the CALFED agencies:

- Funded 118 watershed projects totaling \$51.1 million. These projects have addressed a variety of goals including water quality, flood management, and ecosystem restoration at the local scale.
- Supported 49 watershed coordinators throughout the state.
- Developed watershed assessments on 4,652 square miles (nearly 3 million acres) of the Bay-Delta watershed.
- Completed a comprehensive review of the first 54 projects funded showing that CALFED watershed projects are making significant contributions to local water quality, water supply reliability, and ecological health.

**Water Quality** – In 2004, stakeholders and CALFED agencies worked closely to secure adequate funding from Proposition 50 for projects that contribute to CALFED water quality objectives. Lack of consistent funding in previous years prevented the Program from making significant headway on water quality goals described in the CALFED ROD. During the first four years of CALFED ROD implementation, the CALFED agencies:

- Invested in projects to improve water quality for drinking water and ecosystems and promote watershed management, including:

- More than \$80 million in 63 drinking water quality projects to improve drinking water quality, ranging from source improvement, regional water investigations and exchanges, conveyance improvements, treatment demonstrations and research across the state.
- More than \$70 million in 58 ecosystem restoration projects to identify and reduce contaminants like mercury that can bioaccumulate and affect aquatic life, wildlife and humans who consume fish.
- More than \$40 million in more than 100 watershed projects to provide overall improvement of water quality through watershed stewardship throughout the Bay-Delta and its tributaries.
- Approved a comprehensive Mercury Strategy that will guide and integrate the management and research of mercury in the Bay-Delta system. The strategy is considered one of the most comprehensive of its kind in the country.
- Initiated development of comprehensive plans that will guide management of salinity that impacts drinking water quality and dissolved oxygen that blocks passage of salmon on the San Joaquin River.

**Environmental Water Account** – In its first four years, the Environmental Water Account has been successful in providing fisheries protection and water supply reliability benefits. The fourth annual technical review of EWA operations was held in November 2004. EWA agencies acquired more than 155,000 acre-feet of water in Year 4. In the first four years, more than 1 million acre-feet of water was used to protect fish and maintain deliveries to cities and farms. In September 2004, the implementing agencies extended the EWA for an additional three years.

**Water Use Efficiency** – In the first four years, the CALFED agencies provided more than \$160 million in grants, loans and technical support for local water conservation and recycling projects that contribute to the goals of the Program. To date, projects funded through the Water Use Efficiency Program are projected to result in an annual water savings of nearly 50,000 acre-feet of conserved water, and recycle more than 400,000 acre-feet. In April 2004, the Authority adopted a comprehensive set of recommendations to improve measurement of urban and agricultural water use and authorized the Director to work with the State Administration and the Legislature to develop legislation to implement the recommendations.

**Water Transfers** – The Program is on track, assisting in the transfer of more than 700,000 acre-feet of water in 2004, which includes the Environmental Water Account. In the first four years of the CALFED Program, over 3.5 million acre-feet of water was transferred for the Environmental Water Account, DWR Dry Year Program, CVPIA Transfers, Refuge Water Supply and Instream Programs, CVP Forbearance, and the Colorado River Contingency Plan. The On Tap web site is operational and has been updated.

**Ecosystem Restoration** – Since its inception seven years ago, the Ecosystem Restoration Program has made significant improvements in the habitats and species associated with the Bay-Delta and its watersheds. The CALFED agencies have:

- Invested more than \$500 million on 415 projects aimed at improving and restoring ecosystems.
- Worked with the Science Program to complete the “Mercury Strategy for the Bay-

- Delta Ecosystem: A Unifying Framework for Science, Adaptive Management, and Ecological Restoration” (Mercury Strategy).
- Released a request for grant proposals to provide funding to continue monitoring and evaluating previously funded restoration projects. Funding decisions are expected in late 2005.

In 2004, the Ecosystem Restoration Program implementing agencies completed a comprehensive assessment of the overall status of the Ecosystem Restoration Program towards achieving the implementation milestones identified in the Multi-Species Conservation Strategy for the CALFED Bay-Delta Program. This assessment found that progress on nearly 80 percent of the milestones was on or ahead of schedule. This progress was sufficient to allow the State and Federal regulatory agencies to continue coverage under the State and Federal Endangered Species Act for the entire CALFED Program and contributed to their continuing the program-level commitments.

**Science** – The Science Program in 2004 continued with its intensive effort to improve the understanding of the Bay-Delta system by organizing workshops and symposia and launching a peer reviewed online journal that highlights relevant local research and monitoring. In addition, the Science Program:

- Conducted the fourth annual EWA technical review that looked at the past four years of EWA operations and provided information that will be used in the development of the long-term EWA.
- Held the third CALFED Science Conference in Sacramento in October 2004. More than 1,300 participants attended to hear the results of CALFED supported research.
- Released a request for grant proposals in October that will provide funding for research on key science questions associated with the CALFED Program. Funding decisions are expected in late 2005.

The Science Program continues to support the Independent Science Board and provides assistance with the development of program and issue specific science advisory groups. A new Water Management Science Board was established in 2004 and will meet for the first time in January 2005.

**Oversight & Coordination** – Federal authorization for implementing the CALFED Program was provided by Congress and signed into law by the President on October 25, 2004. This six-year authorization allows the Federal agencies to participate in the Authority as non-voting members, and authorizes appropriation of \$389 million for new CALFED related activities. In addition, the Authority:

- Provided an important public forum for discussions and integration of finance issues, Delta water project operations, science activities, and agency grant awards.
- Prepared a Finance Options Report and led the effort to develop a Finance Plan for the entire Program.
- Continued support for the California Bay-Delta Public Advisory Committee, that serves an important advisory function, providing recommendations to the Secretary of the Interior, other participating Federal agencies, the Governor and the Authority on implementation of the CALFED Program.

- Coordinated implementation of environmental justice and tribal activities across all Program elements and agencies.
- Developed draft regional profiles that provide information on regional water use and needs, funding, priorities and opportunities to build State, Federal, and local partnerships to maximize regional and statewide benefits. These profiles were developed in coordination with Department of Water Resource's State Water Plan Update.

### **Year 5 and Beyond**

To ensure ongoing balanced implementation of the CALFED Bay-Delta Program, priorities for 2005 include:

**Finance Plan** – Implement the Finance Plan, including the identification of cost-sharing partners consistent with the beneficiaries-pay approach, to support Program implementation. Under the new Federal authorization, support adequate Federal appropriations and continue to coordinate Proposition 50 grants and loans to ensure progress in all areas of the CALFED Program.

**Delta Improvements Package** – Implement the Delta Improvements Package, including progress towards increased permitted pumping capacity from the State Water Project Delta pumping plant while continuing to meet Delta water quality standards and protect key native fish populations.

**Levee Assessment** – Undertake a comprehensive reassessment of the Delta Levee Program to address the risks facing the Delta and how the Delta levee system will be managed in the future.

**Performance Measures** – Establishment of appropriate performance measures that will evaluate how well specific Program elements are meeting the objectives of the CALFED Program.

**Water Measurement Legislation** – Support the adoption of water measurement legislation that will result in the collection of critical water use information and provide information to support water management decisions.

**Water Quality Planning and Implementation** – Complete the Water Quality Strategic Plan and the salinity and dissolved oxygen management plans that will guide local and public water quality investments and improvements. Develop an implementation work plan based on the Mercury Strategy.

**Regional Profiles** – Continue refinement of regional profiles to provide insight into regional water use and needs, regional funding, regional priorities and opportunities to build State, Federal, and local partnerships to maximize regional and statewide benefits.